

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 1945 of 2025

**Central Board of Trustees, through the Regional Provident Fund
Commissioner-1 Regional Office Howrah**

Vs

**The Registrar Central Government Industrial Tribunal, Kolkata &
Anr.**

For the Petitioner : Mr. Shiv Chandra Prasad.

For the Aditya Birla Vani : Mr. Arnab Dutt.
Bharti/Respondent

Hearing concluded on : 12.02.2025

Judgment on : 05.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred against an order dated 27.08.2024 in appeal EPF No. 19 of 2016 (old no. 595(15) 2016) passed by the Judge, Central Government Industrial Tribunal, Kolkata.

2. Vide the order dated 28th April, 2016, the Assistant Provident Fund Commissioner (Damage Cell) concerned in a proceedings under Section 14B of the EPF & MP Act held as follows:-

“For the above reasons order for levy of damage of the below mentioned amount as per prescribed rate under Para 32A of the EPF Scheme, 1952, Para 5 of the EPS 1995 and 8A of EDLI Scheme, 1976 and also the amount of interest as per provisions under Section 7Q of the Act, to be paid by the establishment. And direct the employer of the establishment M/S Rishra Vani Sharati to remit the aforesaid balance amount of damage and interest within 10 days time from receipt of this order. In case of failure actions under Section 8B to 8G of the Act may be initiated against the employer of the establishment.”

3. The total dues was assessed at Rs. 917552.
4. The said order was appealed before the Central Government Industrial Tribunal, Kolkata. **The tribunal considering the materials on record held as follows:-**

“EPF 19 of 2016

*Therefore, let me see whether the APFC (Damage), Howrah is justified in imposing **damages for the period from 01-03-2005 to 31-10-2013** the period during which the establishment was enjoying **exemption u/s 17 of the Act of 1952 till 01-04-2011**. That a penal provision should be construed strictly. Penalty is not to be levied in*

all situations of all delayed remittance of P. F. dues. The word damages in section 14-B is related to the word 'default' in payment of contribution which is need to be made by 15th of the following month and if there is a failure to perform such duty then section 14-B comes into the picture. In view of provision of section 7-Q of the Act, as soon as any amount becomes due, interest will accumulate automatically till such time the amount is paid. As per provision of EPF & MP Act, 1952 the interest in PF contribution is mandatory but in respect of levy of damages it is left to the discretion of the P.F. authority to decide the percentage of damage/amount payable by the employer but he has to decide based on the facts and circumstances of each case. That order levying damages for late payment of P.F. contribution cannot be undertaken as a mechanical process, **The EPFO authority which exercise discretionary power u/s 14-B is bound to take into account an aggravating and mitigating circumstances which has prevented the Appellant to make deposit in time and to see whether there is wilful and deliberate delay on the part of the employer.** If the employer makes the payment without any reason then EPF Authority can burden the employer by way of imposition of penalty. Further, it appears that damages has no relationship to the loss suffered by the beneficiaries under the scheme as they are compensated by imposition of interest on belated remittance and realized/recovered interest on belated remittance is credited in the accounts of the beneficiaries but the **realized/recovered damages is not credited in the accounts of the beneficiaries.** In view of the above, this Tribunal holds the impugned order suffers from illegality and without basis. **Thus, EPF Appeal no. 19 of 2016 is hereby allowed and impugned order u/s 14-B of the EPF Act dt. 28-04-2016 is hereby set aside."**

5. Being aggrieved the Central Board of Trustees through the Regional Provident Fund Commissioner has challenged the said order of Tribunal.

6. **The respondent no. 2 has relied upon the following judgments:-**

- i. *Cable Corpn. of India Ltd. & Anr. vs Union of India & Anr.*, 2006 SCC OnLine Bom 765.
- ii. *Employees' State Insurance Corporation vs HMT Ltd. & Anr.*, (2008) 3 SCC 35.
- iii. *Prestolite (India) Ltd. vs Regional Director & Anr.*, 1994 Supp (3) SCC 690.
- iv. *Hindustan Times Ltd. vs Union of India & Ors.*, (1998) 2 SCC 242.
- v. *Sun Pressings (P) Ltd. vs The Presiding Officer*, 2024 (1) Writ L.R. 801.

7. In ***Organo Chemicals Industries and Anr. vs Union of India & Ors.*, 1979 (4) SCC 573, decided on 23 July, 1979**, the Supreme Court held:-

“Per Krishna Iyer, J.

6. A high official hears and decides. The maximum harm is pecuniary liability limited by the statute. The writ jurisdiction is ready to review glaring errors. Under such circumstances the needs of the factual situation and the legal milieu are such that the

absence of appellate review in no way militates against the justice and reasonableness of the provision. The argument of arbitrariness on this score is untenable. **The section is not bad, though action under the section can be challenged in writ jurisdiction when infirmities which attract such jurisdiction vitiate the order. [71 E-F]**

8. The word 'damages' under s. 14B has a wealth of implications and limitations, sufficient to serve as guideline in fixing the impost. The conceptual limitations of 'damages' serve as guideline and barricade the exercise. The Commissioner cannot award anything more than or unrelated to 'damages'. Nor can he go beyond 100% of the amount defaulted. Such limitations without further guidelines are not uncommon in taxing laws to penalise defaults and suppressions. [73B, H, 74A] 64 C.I.T., M.P. v. Radhakrishnan, [1979] 2 SCC 249; P. N. Kaushal v. Union of India, etc., [1978] 3 SCC 558; referred to.

11. The power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14B is therefore good for these reasons. [74G]

Per Sen, J.

3. The imposition of damages under section 14B serves a two-fold purpose. It results in damnification and also serves as a deterrent. The predominant object is to penalise, so that an employer may be thwarted or deterred from making any further defaults. [87E]

The expression "damages" accruing in Section 14B is, in substance, a penalty imposed on the employer for the breach of the statutory obligation. The object of imposition of penalty u/s 14B is not merely "to provide compensation for the employees". The

imposition of damages u/s 14B serves both the purposes. It is meant to penalise defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirement of section 6 of the Act, but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to recompense the employees for the loss sustained by them. The damages need not bear any relationship to the loss which is caused to the beneficiaries under the scheme. [87F-G]

7. *The power of Regional Provident Fund Commissioner to impose damages under section 14B is quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the statute, by taking into consideration various factors, namely, the number of defaults, the period of delay, the frequency of defaults and the amount involved. Having regard to the punitive nature of the power exercisable under Section 14B and the consequences that ensue therefrom, **an order under Section 14B must be a "speaking order" containing the reasons in support of it. [83H-84A] 67 Commissioner of Coal Mines Provident Fund, Dhanbad v. J. Lalla & Sons, [1976] 3 S.C.R. 365; referred to.***

8. *Mere absence of provision for an appeal in the Employees Provident Fund and Miscellaneous Provisions Act, 1952 does not imply that the Regional Provident Fund Commissioner, is invested with arbitrary or uncontrolled power, without any guidelines. [85B]*

The conferral of power to award damages under section 14B is to ensure the success of the measure. It is dependent on existence of certain facts, there has to be an objective determination, not subjective. [85C]

The Regional Provident Fund Commissioner has not only to apply his mind to the requirements

of Section 14B but is cast with the duty of making a speaking order after conforming to the rules of natural justice. [85C]

The absence of a provision for appeal or revision can be of no consequence. Where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such a high authority will not be abused. The Government or such authority is in a position to have all the relevant and necessary information in relation to each kind of establishment, the nature of defaults made by the employer and the necessity to decide whether the damages to be imposed should be exemplary or not. When the power has to be exercised by one of the highest officers, the fact that no appeal has been provided for "is a matter of no moment". There is always a presumption that public officials would discharge, their duties honestly and in accordance with the rules of law. [85G, D-F]

Mohammad Ali and Ors. v. Union of India and Anr., [1963] Suppl. 1 SCR 993; K. L. Gupta v. Bombay Municipal Corporation, [1968] 1 SCR 274; Chintalingam and Ors. V. Govt. of India and Ors. [1971] 2 SCR 871 and Pannalal Binjraj v. Union of India, [1957] SCR 233; followed."

8. In *Horticulture Experiment Station Gonikoppal, Coorg vs*

The Regional Provident Fund Organisation, (2022) 4 SCC

516, the Supreme Court held:-

“13. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

17. Taking note of three-Judge Bench judgment of this Court in **Union of India and Others v. Dharmendra Textile Processors and**

others (supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levy of damages under Section 14B of the Act 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities.”

9. Para 32B of the EPF scheme, 1952 is as follows:-

“32B. Terms and conditions for reduction or waiver of damages.- The Central Board may reduce or waive the damages levied under section 14-B of the Act in relation to an establishment specified in the second proviso to section 14-B, subject to the following terms and conditions, namely,-

(a)in case of a change of management including transfer of the undertaking to workers' co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b)in cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its Scheme, in this behalf recommends, waiver of damages up to 100 per cent. may be allowed;

(c)in other cases, depending on merits, reduction of damages up to 50 per cent. may be allowed.”

10. In *M/s. Hindustan Times Limited vs Union of India & Ors.*,

AIR 1998 SC 688, decided on 7 January, 1998, the

Supreme Court held:-

“..... From the aforesaid decisions, the following principles can be summarised: The authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after

following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability; there is no period of limitation prescribed by the legislature for initiating action for recovery of damages under section 14B. The fact that proceedings are initiated or demand for damages is made after several years cannot by itself be a ground for drawing an inference of waiver or that the employer was lulled into a belief that no proceedings under section 14B would be taken; mere delay in initiating action under section 14B cannot amount to prejudice inasmuch as the delay on the part of the department, would have only allowed the employer to use the monies for his own purposes or for his business especially when there is no additional provision for charging interest. However, the employer can claim prejudice if there is proof that between the period of default and the date of initiation of action under section 14B, he had changed his position to his detriment to such an extent that if the recovery is made after a large number of years, the prejudice to him is of an "irretrievable" nature: he might also claim prejudice upon proof of loss of all the relevant records and/or non-availability of the personnel who were, several years back in charge of these payments and provided he further establishes that there is no other way he can reconstruct the record or produce evidence; or there are other similar grounds which could lead to "irretrievable" prejudice; further, in such cases of "irretrievable" prejudice, the defaulter must take the necessary pleas in defence in the reply to the show cause notice and must satisfy the concerned authority with acceptable material; if those pleas are rejected, he cannot raise them in the High Court unless there is a clear pleading in the writ petition to that effect....."

- 11. Under the Employees' Provident Fund Act,** Section 14B allows the Central Provident Fund Commissioner to recover "damages" from employers who fail to make timely payments of mandatory contributions to the Employees' Provident Fund (EPF), essentially acting as a penalty to incentivize compliance and ensure employees receive their full benefits by punishing employers for delayed payments; this includes contributions to the Pension Fund and Insurance Fund as well.
- 12. In the present case** the tribunal rightly held that the order challenged before it did not contain any details as to how and why the damages was awarded. No proper calculation has been shown in the order.
- 13.** i) The school in this case was an exempted establishment from 01.03.2005 till 31.03.2011. As such imposing damages for the said period is not in accordance with law.
- ii) Exemption in this case was withdrawn on 01.04.2011.
- iii) The funds were transferred as per process/rules laid down, in consultation with the P.F. Authorities.
- 14.** The table shown in respect of the damages and interest assessed is without any calculation. It is a general table showing the due.

15. Admittedly there was **no laches on the part of the school** in attending the hearings, but the order challenged before the tribunal was clearly not in accordance with law.
16. The order challenged before the tribunal shows that after the voluntary withdrawal from exemption, the matter was before the authority regarding the transfer of funds in 2014.
17. **The order passed by the authority does not speak as to how the delay was assessed.** Sufficient explanation has been placed by the representative of the school, **but no proper order has been passed by the authority.**
18. Thus the damages as assessed under Section 14B of the EPF Act along with interest is clearly arbitrary and has been passed by the authority (APFC (damage cell)) without proper reasons and was thus not in accordance with law, and **the learned tribunal rightly set aside the said order dated 28.04.2016.**
19. The learned tribunal's finding thus being in accordance with law requires no interference and is thus affirmed.
20. **WPA 1945 of 2025 is dismissed.**
21. All connected application, if any, stands disposed of.
22. Interim order, if any, stands vacated.

- 23.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]